

ARNOLD HARRIS AND SAMUEL F. BUTTERWORTH.

MAY 18, 1860.—Ordered to be printed.

Mr. REYNOLDS, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred Senate Bill No. 23, for the relief of Arnold Harris and Samuel F. Butterworth, having had the same under consideration, respectfully report:

That from the papers which accompany the bill it appears that Arnold Harris and Samuel F. Butterworth were sureties on the official bond of William G. Kendall, who was appointed postmaster of New Orleans in April, 1853, and dismissed from office on the 7th of May, 1853, charged with having robbed the mails. He was subsequently indicted for the offence charged against him, and after two trials acquitted. Before his trial his account with the Post Office Department was stated, showing a balance against him of \$10,839 19. This amount he failed to pay, and in January, 1856, it was paid by his sureties. Soon after this Kendall was tried at New Orleans and acquitted. He immediately left for Mexico, where it is said he now resides. In the month of September, 1856, on re-examining the account of Kendall with the Post Office Department, it was discovered that an error had been committed, and that there was still a balance due the government of \$5,365 47, which the sureties were called upon to pay, and they neglecting to do so a suit was brought and judgment received against them for the amount. From this judgment they asked to be released by act of Congress. The ground upon which this immunity is asked is somewhat obscurely presented in the memorial, but seems to be, that they were in some respects prejudiced by the error in suit stating the account of Kendall; and also that Kendall, being subjected to large expense in defending himself from the indictment preferred against him, that his sureties should be permitted to set this expenditure off against the balance due the government on Kendall's account as postmaster of New Orleans. There is nothing whatever to show that anything more is claimed of the sureties than the exact amount due from Kendall to the government, and the question is whether any sufficient reason exists for releasing the sureties

from the responsibilities which they voluntarily assumed in signing the official bond of Kendall.

It is stated in the memorial that when the account of Kendall was first stated at \$10,839 19 he insisted that no such amount was due from him, and that the claim was made merely to present him as a defaulter to the government, and thus prejudice his case on the trial before a jury. The memorialists say that, "not doubting his statements, and certain of his innocence," they paid the amount without investigation as soon as it was presented, in order to insure Kendall a fair trial, as they knew that all his available means were required by him to prepare for his defence against the indictment pending against him; and they aver that if the department had at first claimed a balance of \$16,204 66 as due from Kendall, they would not have paid that large sum without investigation and legal resistance, unless first indemnified by Kendall.

It is to be observed that it is not now claimed that the sum of \$16,204 66 was not actually due from Kendall to the government at the time of his removal from office, and the memorialists were legally bound to the government for that sum. They paid the first balance of \$10,839 19 without any investigation, and upon the belief, as they aver, that this amount was not due, but believing that the Post Office Department had made a false claim against Kendall with a view of aiding in his unjust conviction of a crime of which he was innocent. The motives upon which they acted in making this payment must be regarded as quite extraordinary, and imply an excess of confidence in Kendall quite inconsistent with the idea that they would have resisted the payment of the true balance if no mistake in stating it had at first occurred. In paying \$10,839 19 to the government in the belief that it was not due, and for the purpose of insuring Kendall a fair trial, they acted in a manner scarcely consistent with the declaration that the payment would have been resisted if the amount had been properly stated at a few thousand dollars more. It is quite incredible that a confidence in the integrity and truthfulness of Kendall, and in the baseness of the officers of the Post Office Department, which induced so prompt a payment of the large sum of \$10,839 19, believed not to be due, would have been shaken if the balance claimed had been \$16,204 66, as it should have been. But whether they would or would not have paid it if the true amount had been demanded in the first instance does not appear to be material, because it is quite clear that the amount could have been recovered by the government, as no question is made now but that it is justly due, and for the unpaid balance the United States have recovered the judgment from which they ask to be released, and it is not claimed that there is any legal defence to be urged against it.

The precise grounds upon which the memorialists ask Congress to release them from the judgment for the balance due from Kendall are substantially, *first*, that, by the error of the department in stating the account of Kendall, in the first instance, they were deprived of all remedy against Kendall, inasmuch as he left the United States and went to Mexico before the error was discovered and a claim made upon his sureties to pay the balance; and, *second*, that Kendall was

indicted for robbing the mail, and vigorously prosecuted by the United States, but was acquitted; that he was obliged to expend an amount of money in his defence sufficient to have paid the balance due from him to the government, and for this reason, it is said, the sureties on his official bond ought to be released.

In answer to the first ground upon which relief is asked, it is sufficient to say that it does not appear that the memorialists lost any claim upon Kendall by his departure from the United States, which would have been effectual if he had remained in this country. It is not claimed that he took any property with him, and such as he left behind could be quite as easily reached by his creditors during his absence as if he had remained in person to respond to the process of the courts. It is said that he had property at Biloxi, Mississippi, worth about \$12,000, which he undertook to settle on his wife before leaving the country, and that proceedings are now pending on behalf of the United States to subject this property to the payment of the judgment, from which the memorialists seek to obtain their release. There would seem to be no valid reason to suppose that this proceeding will not be successful if vigorously prosecuted; and if so, no action of Congress will be required to protect the sureties from loss; and if not successful, it is not perceived that the memorialists have any just claim to the bounty of the government. It is not shown that they made any effort against Kendall to obtain any security against loss at the time they made the payment of \$10,839 19, and at this time and for many months after Kendall was within the reach of process; nor does it appear that they would be any more likely to obtain any redress for the balance they are required to pay if Kendall was now a resident. They appear to have placed confidence in him, and have been deceived; and the case is not different from that of any other surety who is called upon to respond for the infidelity of his principal, for the mere fact that there was an error in originally stating the balance due does not in any respect change the liability, as it does not appear that it has debarred them of any substantial remedy against Kendall which they otherwise would have had. The release of the sureties in this case, for the reason assigned, would furnish a precedent for the discharge of every surety upon an official bond where the officer has proved unfaithful, and thus render the guarantee which is required by the government for the fidelity of a receiving or disbursing officer a mere formal proceeding.

The *second* reason assigned for granting the relief sought is still more unworthy of consideration. It amounts to nothing more than proving the pecuniary inability of Kendall to pay the balance due from him to the government, and thus presents the precise case to meet which a surety is required. It does not matter whether his estate was wasted in a ruinous law suit or an unfortunate speculation. In the present case the allegation is that Kendall was subjected to ruinous expense in defending himself against a "monstrous persecution" by the government. It can hardly be admissible to act upon the assumption that any branch of the government has been engaged in a wicked attempt to destroy a citizen in procuring by any improper influence his connexion of an infamous crime, and we see no evidence

which gives any color to the imputation. The party who seeks immunity from a legal obligation upon such a charge ought to be held to this proof, and in any view the release of a demand due the United States, in consideration that the debtor has used the money of the government in defending himself from a charge of robbing the mails, involves an application of the doctrine of set-off which cannot have our approval. The committee therefore recommend that the bill under consideration do not pass.